EXHIBIT 2

Page 1

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 1         IN THE UNITED STATES DISTRICT COURT
        FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
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    THE CITY OF HUNTINGTON,
 5
             Plaintiff,
 6
    vs.                              CIVIL ACTION
 7                                   NO. 3:17-01362

    AMERISOURCEBERGEN DRUG
 8  CORPORATION, et al.,
 9           Defendants.
10  _____
11  CABELL COUNTY COMMISSION,
12           Plaintiff,
13  vs.                              CIVIL ACTION
                                     NO. 3:17-01665
14  AMERISOURCEBERGEN DRUG
    CORPORATION, et al.,
15
             Defendants.
16
    * * * * * * * * * * * * * * * * * * * * * * *
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19         Videotaped and Zoom video conference
    deposition of JAMES RAFALSKI taken by the Defendants
20  under the Federal Rules of Civil Procedure in the
    above-entitled action, pursuant to notice, before
21  Jennifer Vail-Kirkbride, a Registered Merit
    Reporter, on the 11th day of September, 2020.
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1   Exhibit 1 is your report in the lawsuit of Cabell

2   County and the City of Huntington against three

3   distributors?

4   A.   Yes, sir.

5   Q.   Are you ready to testify fully regarding

6   the opinions in that report?

7   A.   I am.

8   Q.   Is there any further work you know of right

9   now that you need to do before you can testify?

10   A.   Uh, no, sir.

11   Q.   Does the report that we've marked as

12   Exhibit 1 contain all of the opinions you currently

13   know about or intend to offer in the Cabell County,

14   Huntington case?

15   A.   Yes, sir, it does.

16   Q.   There's no additional opinions you know

17   about or that you plan to offer that are not

18   contained in there; correct?

19   A.   Not at this time; no, sir.

20   Q.   Okay. We've had the benefit now of meeting

21   on a couple of occasions. You've given testimony in

22   a few different jurisdictions and also prepared two

23   other reports. Is there anything in your prior

24   testimony or reports you know about that you need to

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1   about whether there was diversion at any pharmacy

2   level in West Virginia; correct?

3   A.   Not as -- not expressed in my report; no,

4   sir.

5   Q.   And there's no opinions you have on

6   diversion at the pharmacy level that are unexpressed

7   in your report; correct? I'm just asking that as a

8   yes or no question.

9   A.   Say it one more time. Could you repeat it.

10   Q.   Sure, I am just picking up on your answers.

11   As I understood your answer right now, there are no

12   opinions you are offering of diversion that occurred

13   at a pharmacy level; is that true or false?

14   A.   Nothing outside of what's stated in my

15   report.

16   Q.   That's not what I asked you, sir. Are you

17   offering any opinions about whether diversion

18   occurred at a pharmacy level, yes or no?

19   A.   No.

20   Q.   Thank you. Do you know -- I was -- I was

21   quoting from West Virginia Board of Pharmacy

22   documents when I said to you that they made findings

23   regarding specific pharmacies that "no improper

24   dispensing," "no illegal sales," quote, quote, "for

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 1        A.   Yes; it's up along the Kentucky border.

 2        Q.   Do you know where it is relative to Cabell

 3   County?

 4        A.   Not specifically, sir.

 5        Q.   Do you know what county Huntington is in?

 6        A.   I think Cabell County.

 7        Q.   Okay.  But you don't know where in Cabell

 8   County it is?

 9        A.   Geographically, no.  Up -- I think at the

10   northern part of the county, northeastern part.

11        Q.   Do you know what kind of population Cabell

12   County has in terms of medical needs?

13        A.   I recall seeing some population figures,

14   but that would just be general population.  When you

15   qualify it with medical needs, I have not seen any

16   of those documents; no, sir.  And I -- I wouldn't --

17   I really wouldn't have had a need to look at that or

18   have been provided that in trying to make my -- you

19   know, assess my opinion.  But I know it's

20   all-encompassing information.

21        Q.   Do you know if Cabell County is primarily

22   rural or urban?

23        A.   I think it's a mix of both.

24        Q.   Like 50/50?  I don't know what -- what does
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1        A.  Yes, sir.

2        Q.  West Virginia conduct?

3        A.  Yes, sir.

4        Q.  Okay.  Do you see these six flagging

5   analyses --

6        A.  I do.

7        Q.  -- starting on page 48?

8        A.  Yes, I do, sir.

9        Q.  Each of these six was performed by Doctor

10  McCann; correct?

11       A.  Yes, sir.

12       Q.  And you did not check the math on any of

13  these six; correct?

14       A.  I did not.

15       Q.  You did not speak with Doctor McCann before

16  he ran these calculations that were -- that you

17  adopted into your report; correct?

18       A.  That's correct, I did not.

19       Q.  As I understand it, for the first time you

20  spoke with Doctor McCann on August 29th?

21       A.  Not literally the first time, but the first

22  time in regards to CT2.

23       Q.  Okay.  And when did you literally speak to

24  him for the first time?
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1   matter and then you had questions to clarify with

2   him?

3   A.   I believe that's the sequence; yes, sir.

4   Q.   And what were those questions? What were

5   the points you wanted to clarify?

6   A.   Uh, the one point I remember is on the

7   Masters Methodology B, or we'll call it maybe

8   Masters B, I was -- wanted to make sure on the

9   triggering order that he was -- his calculation on

10   dosage units was the whole order and not the amount

11   that just was above the triggering amount, if that

12   hopefully makes sense to you.

13   Q.   It does, yes. And you weren't sure of that

14   before you reached out to him? [overtalking]

15   A.   Well, no, that's why I reached out, if I

16   was sure, then I wouldn't have done it.

17   Q.   That's why that was an easy

18   question. Collectively your different methods flag

19   tens of millions of orders; correct?

20   A.   They do.

21   Q.   You've not reviewed each of those flagged

22   orders; correct?

23   A.   No, sir.

24   Q.   Do you know how many of the tens of

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1   millions you've actually reviewed?

2   A.   Yes, I have not reviewed any of them.

3   Q.   None of the initial orders, none of the

4   follow-up orders; correct?

5   A.   No, sir.

6   Q.   So you did not personally determine whether

7   any of the flagged orders when you look at them, you

8   actually consider them to be suspicious; correct?

9   A.   Well, I think the fact that they are

10 identified by the trigger, the algorithm, makes --

11 makes them not a suspicious order.

12   Q.   Okay.   Did you individually review any of

13 them to see if you just looked at the order on its

14 face whether you would consider it to be suspicious?

15   A.   No, sir.

16   Q.   Did you individually look at any of them to

17 consider just based on the information you had about

18 the actual order whether you would consider it to be

19 likely to be diverted?

20   A.   Can you say that one more time, please.

21   Q.   Sure.   Did you look at the individual

22 orders to consider whether based on the information

23 actually reflected in the individual orders, you

24 would make the judgment that there were likely to be

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1   did you actually evaluate any single order and make

2   a judgment, "This order is likely to be diverted,"

3   based on the facts of looking at this order,

4   separate and apart from your flagging exercise. Did

5   you look at any orders to see "Based on the facts of

6   this order I can come to a judgment that it's likely

7   to be diverted"?

8   A.   I think my opinion is that more likely than

9   not all of those orders are diverted.

10   Q.   Well, that's what I'm going to come to. My

11   question is did you actually look at any of the

12   individual ones to say, "When I look at this

13   individual one, this looks like it's likely to be

14   diverted"?

15   A.   No, sir, not individually.

16   Q.   Okay. Did you review the diligence files

17   for every one of these tens of millions of flagged

18   orders?

19   A.   There -- that wouldn't be possible.

20   Q.   For example, you can't say you reviewed the

21   complete diligence files for McKesson in Cabell

22   County; correct?

23   A.   Well, that's a different question, is that

24   outside of discussing the trigger orders?

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1   all of them.

2   Q.   Okay. Do you know whether it was between 1

3   and 99 percent of these orders that went to fill

4   legitimate medical needs?

5   A.   I don't know, sir.

6   Q.   Do you know -- am I right in understanding

7   you believe all of these tens of millions of orders

8   should have been reported to the DEA as suspicious?

9   A.   Oh, that's a different question.

10   Q.   Should they -- should all of these tens of

11   millions of orders that you flagged in Method A have

12   been reported to the DEA as suspicious? Yes or no?

13   A.   No.

14   Q.   Okay. How many should have been reported

15   to the DEA as suspicious?

16   A.   The nature of my application of the

17   methodology, the algorithm, wasn't for the purpose

18   to identify orders that would be reported to the

19   DEA. It was just a triggering mechanism to identify

20   orders from the transactional data from the

21   defendants. It -- it would -- it's a much -- it's

22   broader, it's a broader requirement for the

23   defendants than -- than just to -- for me to apply

24   an algorithm to their transactional data and then

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 1    say they should have reported them.  That's -- I

 2    mean, that's outside of what occurred here.

 3         Q.  Okay.  So these tens of millions of orders,

 4    can you give me any definition as to whether any of

 5    them, and if so how many, should have been reported

 6    to the DEA as suspicious?

 7         A.  I -- I didn't do that kind of

 8    evaluations.  No, I can't give you a number, sir.

 9         Q.  So you don't have an opinion that any of

10    these orders individually should have been reported

11    to the DEA as suspicious; correct?

12         A.  I didn't consider that as -- that's not

13    something I considered in doing this

14    evaluation.  Certainly there are orders contained in

15    there that should have been reported to the

16    DEA.  The due diligence assumption based on the

17    defendant failures renders, you know, the ability to

18    look at specific orders to report it to the DEA just

19    doesn't make that feasible.

20         Q.  How many of these tens of millions of

21    orders should have been reported to the DEA as

22    suspicious?

23         A.  I don't have a number, sir.

24         Q.  More than a million?
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1   brought along based on your assumption?

2   A.   For each defendant there is one first order

3   and every subsequent one is flagged if we are

4   talking about Masters A?

5   Q.   Yes, how many first orders?

6   MR. FULLER: Object to form.

7   Q.   Like, let's take an example of the 11.6

8   million oxycodone orders for ABDC, how many of those

9   11.6 million were initial orders and how many of

10   them just came along due to the assumption?

11   A.   One initial order.

12   Q.   And then the remaining 11,610,919 orders

13   were cumulatively flagged?

14   A.   Yes, sir.

15   Q.   Okay. And is that true for every one of

16   your defendants, that there was only one initial

17   order flagged and then every other order you

18   identify was flagged based on the assumption that

19   because there was not diligence on that initial

20   order, the subsequent orders should have been held?

21   A.   So -- just so I'm clear, the totality of

22   all of -- all of the figures here or are we talking

23   about Masters A?

24   Q.   Masters A. Just Masters A.

1   A.   All right. I didn't want to answer

2   incorrectly or make assumptions. The first one on

3   Masters A, each defendant would be yes to that

4   answer, the first one.

5   Q.   Okay. And so am I correct that for Method

6   A, for each defendant there is one, single order

7   that drives the remaining millions of orders that

8   you have flagged?

9   A.   Yes, sir.

10   Q.   And have you looked -- have you identified

11   those single orders for -- in their entirety for

12   McKesson, Cardinal, and ABDC?

13   A.   I don't understand the question, sir.

14   Q.   Have you looked at those initial orders for

15   McKesson, Cardinal, and ABDC that are the initial

16   flagged orders of your Method A?

17   A.   No, sir.

18   Q.   Do you know the diligence that was

19   conducted on those initial flagged orders for

20   McKesson, Cardinal, and ABDC, not having looked at

21   the actual orders themselves?

22   A.   Well, I couldn't know the diligence if I

23   answered I didn't know the orders. And as I

24   answered earlier, understanding your question, I

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1 diverted because it was 100 pills higher than the

2 March order, would you reach that conclusion? Yes

3 or no?

4   A.   Mr. -- Mr. Schmidt, you can't interject

5 Mr. McCann's methodology and then say -- and then

6 eliminate the methodology and ask me to look at a

7 number. If what you're saying if I just looked at

8 that string of numbers, there's no particular number

9 I would pick out. But if you interject Doctor

10 McCann running the methodology, that -- that would

11 provide a different answer.

12   Q.   I'll try it one more time and then we'll

13 call the Judge.

14   Looking at those numbers and the fact

15 that August is 100 pills more than March, would that

16 lead you to conclude that August is -- those pills

17 are reasonably -- more likely than not, likely to be

18 diverted; yes or no?

19   A.   If we're looking at a string of data and

20 now you have dropped the Doctor McCann application

21 of the methodology and if I'm just looking at a

22 string of data, the answer would be, no, I could not

23 tell.

24   Q.   Okay. So I'm going to try one more time

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1   without the speech. If you just looked at these

2   numbers, because I'm not sure if you understand what

3   Doctor McCann did. Do you know all of his

4   assumptions?

5   A. Uh, yes, sir.

6   Q. Okay. Tell me the ten assumptions he made

7   in coming up with his code that he testified about

8   under oath.

9   A. I do not know all ten; no, sir.

10   Q. Okay. Thank you. Looking at Doctor McCann

11   -- looking at these numbers, does the fact that

12   you've got 100 more pills in August than in March

13   tell you that that August order more likely than not

14   is -- is likely to be diverted?

15   A. I'm going to answer the same way. Just

16   purely looking at the string of numbers if that's

17   your question, no.

18   Q. Does it tell you that the orders from

19   September Year 1 through July Year 2 are more likely

20   than not, likely to be diverted?

21   A. Purely looking at those numbers; no, sir.

22   Q. Okay. Let's look at another example.

23   MR. SCHMIDT: Megan, what's the tab

24   for demonstrative 4?